

ORDER NO. 835

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Mark Acton, Vice Chairman;  
Tony L. Hammond; and  
Nanci E. Langley

Mail Classification Schedule Change  
(Lightweight Commercial Parcels)

Docket No. MC2011-28

ORDER REGARDING COMMERCIAL FIRST-CLASS PACKAGE SERVICE

(Issued August 31, 2011)

I. INTRODUCTION

On August 12, 2011, the Postal Service filed an initial notice with the Commission pursuant to 39 CFR 3020.90 *et seq.* concerning two classification changes related to Lightweight Commercial Parcels.<sup>1</sup> First, the Initial Notice indicates that the Postal Service proposes to change the name of the competitive product “Lightweight Commercial Parcels” to “Commercial First-Class Package Service.” Second, the Initial Notice indicates that the Postal Service proposes to narrow the Commercial Lightweight Parcels’ letter prohibition to cover only the Commercial Base portion of the product.

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<sup>1</sup> Notice of Minor Classification Change, August 12, 2011 (Initial Notice).

## II. PROCEDURAL HISTORY

On August 16, 2011, the Commission issued Order No. 807 initiating the docket in this case, appointing a public representative, providing an opportunity for public comment, and asking clarification questions about the Initial Notice.<sup>2</sup> On August 19, 2011, the Postal Service filed its response to the Commission's clarifying questions in Order No. 807.<sup>3</sup> On August 22, 2011, the Public Representative filed comments.<sup>4</sup>

On August 24, 2011, Chairman's Information Request No. 1 was filed.<sup>5</sup> On the same day, the Postal Service filed a response to the Public Representative's Comments.<sup>6</sup> On August 25, 2011, the Postal Service filed responses to CHIR No. 1.<sup>7</sup>

## III. THE POSTAL SERVICE'S INITIAL NOTICE

The Postal Service's Initial Notice states that it proposes to make two minor classification changes. In particular, it seeks to change all references in the Mail Classification Schedule (MCS) from Lightweight Commercial Parcels to Commercial First-Class Package Service. The Postal Service explains that it seeks to make this change "[f]or business reasons related to the marketing of the Postal Service's competitive products." Initial Notice at 1. Additionally, the Postal Service proposes to narrow Commercial Lightweight Parcels' letter prohibition to cover only the Commercial

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<sup>2</sup> Notice and Order Concerning Classification Changes, August 16, 2011 (Order No. 807).

<sup>3</sup> Response of the United States Postal Service to Notice and Order Concerning Classification Changes, August 19, 2011 (Response to Order No. 807).

<sup>4</sup> Public Representative Comments Concerning Lightweight Commercial Parcels Classification Change, August 22, 2011 (PR Comments). The Public Representative was the only interested person to file comments.

<sup>5</sup> Chairman's Information Request No. 1, August 24, 2011 (CHIR No. 1).

<sup>6</sup> Response of the United States Postal Service to Public Representative Comments, August 24, 2011 (Response to PR Comments). Contemporaneously with its Response to Public Representative Comments, the Postal Service filed a Motion for Leave to File Response to Comments of the Public Representative, August 24, 2011. The motion is granted.

<sup>7</sup> Responses of the United States Postal Service to Questions 1–4 of Chairman's Information Request No. 1, August 25, 2011 (Response to CHIR No. 1).

Base portion of the product, effectively allowing the Commercial Plus portion to contain letters that would be subject to the Private Express Statutes. The Postal Service asserts that the Commercial Plus portion of the product was never subject to the postal monopoly “given that its prices were (and are) more than six times the price of a one-ounce single-piece First-Class Mail letter.” *Id.* at 2. The Postal Service provided draft MCS language changes as part of its Initial Notice. *Id.* at Attachment.

#### IV. COMMENTS AND RESPONSES TO INQUIRIES

*Response to Order No. 807.* In its response to the questions raised by the Commission in Order No. 807, the Postal Service explains that the effective date of the proposed change is August 29, 2011. It noted, however, that “[a]s a practical matter,...the Postal Service will not use the new ‘Commercial First-Class Package Service’ name...in the marketplace until the beginning of Fiscal Year 2012.” Response to Order No. 807 at 2. It also clarifies that the Postal Service believes that the new name “will better convey that the transferred product retains the same service treatment it had and continues to use the same transportation network it used prior to the transfer.” *Id.* at 3. Additionally, The Postal Service’s Response to Order No. 807 makes clear that the Commercial Plus portion of the proposed Commercial First-Class Package Service remains sealed against inspection. The Postal Service provides revised draft MCS language to clarify this potential ambiguity.

*Public Representative Comments.* The Public Representative raises four issues. First, the Public Representative believes that there is a “void” in the Commission’s rules for addressing the Postal Service’s classification change proposals that fall between a scrivener’s error and the addition, removal, or transfer of a product on the product list. PR Comments at 2-3. The Public Representative requests that the Commission initiate a rulemaking proceeding to “fill in” this procedural gap. *Id.* He believes that the filing in this case under 39 CFR 3020.90 *et seq.* rules “lacks sufficient supporting justification” which would have been required by a filing under 39 CFR 3020.30 *et seq.* *Id.* at 3. Second, the Public Representative opposes changing the name of the product as

proposed by the Postal Service because the similarity of the proposed name to the names of other Postal Service offerings “will lead to customer confusion, and is deceptive.” *Id.* The Public Representative also believes that additional customer confusion will result by referring to this product as “Commercial First-Class Package Service” in the MCS, and “First-Class Package Service” in the Domestic Mail Manual (DMM). He contends that the same product name should be used in the MCS, DMM, and when dealing with users of the mail. *Id.* at 5. Third, the Public Representative contends that the Postal Service is seeking to make a third classification change to seal the Commercial Plus portion of the product against inspection. *Id.* at 6. The Public Representative expresses concern that the Postal Service did not even address this additional change until its Response to CHIR No. 1. *Id.* He questions whether this change should make Commercial Plus and Commercial Base separate products. Finally, the Public Representative suggests that the Postal Service “internally coordinate among its departments and publish only one program start date to avoid potential confusion.” *Id.* at 7.

*Postal Service Response to PR Comments.* In an attempt to clarify the record, the Postal Service filed a response to the PR Comments. Its Response to the PR Comments discusses four issues. First, it contends that it filed this docket appropriately under the Commission’s 39 CFR 3020.90 *et seq.* procedures, although it “acknowledges that there is some ambiguity in the rules” with respect to this case. Response to PR Comments at 2. Second, the Postal Service argues that its proposed new name “Commercial First-Class Package Service” is allowed pursuant to the statute because the issue “is fundamentally one of business judgment” which “falls within the purview of Postal Service management.” *Id.* at 6. Third, the Postal Service asserts that its decision to seal only the Commercial Plus portion of the product from postal inspection is proper. It states that a product with a letter prohibition cannot be sealed against inspection. Finally, the Postal Service addresses the differing product names in the *Federal Register* notice and its Initial Notice in this case. It claims that such difference is “not an oversight.” *Id.* at 8. Instead, it states that it believes that, in the

MCS, it would be useful to preserve an indication that the product is exclusively a commercial product. On the other hand, in the DMM and in Postal Service marketing, the Postal Service asserts that would be cumbersome to refer to Commercial First-Class Package Service Commercial Base and Commercial First-Class Package Service Commercial Plus. It believes that there is no statutory or regulatory bar to its using varying product names in the MCS, the DMM, and marketing materials. *Id.*

*Response to CHIR No. 1.* The Response to CHIR No. 1 largely cross-references the Postal Service's Response to PR Comments. Response to CHIR No. 1 at 2, 3.

## V. COMMISSION ANALYSIS

This case involves four major issues: (1) whether the Postal Service's proposed new name is an appropriate name for the new product; (2) whether allowing the Commercial Plus portion of the product to be sealed against inspection is proper under the Postal Accountability and Enhancement Act (PAEA); (3) whether it is acceptable under the statute for the Postal Service to have different names for the same product in the MCS and DMM; and (4) whether this case was appropriately filed under 39 CFR 3020.90 *et seq.* Each of these issues and the Commission's resolution of them are discussed below.

*Proposed product name.* The Postal Service seeks to rename Lightweight Commercial Parcels, which was recently transferred to the competitive product list from the market dominant product list. It would like to call the product "Commercial First-Class Package Service" in the MCS. The Public Representative suggests that such action may confuse or even deceive consumers. The Postal Service asserts that such action is allowed by statute and is properly a matter for its business judgment.

The MCS is a Commission document. See 39 CFR 3020 subpart A. However, it is the Postal Service's responsibility to ensure that the MCS "accurately represent[s] the current offerings of Postal Service products and services." 39 CFR 3020.90. The Commission has concerns regarding the proposed new product name and its use of the term "First-Class," which has been traditionally reserved for monopoly products. The

Commission is encouraged by the Postal Service's assurances that the new competitive product will have the same service attributes as First-Class Mail and use the same transportation network that it used prior to its transfer to the competitive product list.

The Commission also recognizes that the proposed change is for a competitive product. As such, the Commission's responsibilities are more narrowly defined than for market dominant products. This is due to the fact that competitive products are largely regulated by the competitive marketplace. Under these circumstances, the Commission does not find the proposed name, Commercial First-Class Package Service, to be deceptive and will permit this change to the MCS.

*Sealed against inspection.* The Public Representative questions whether the Postal Service's proposal to treat only the Commercial Plus portion of the product as sealed against inspection has been properly justified. The Postal Service argues that a product with a letter prohibition cannot be sealed against inspection. The Commission believes that treating the Commercial Plus portion of the product as sealed against inspection is a natural corollary to the Postal Service's proposal to remove the letter prohibition. The Commission does not find such a proposal improper.

*Product names for purposes of the MCS and DMM.* The Commission views the MCS and DMM as complementary documents. In addition to establishing product lists, the MCS sets forth descriptions of all Postal Service products. See 39 CFR 3020.13. In this respect, the MCS and DMM should be consistent. The Commission believes it is particularly important for the product names to match. This enhances transparency, accountability, record keeping, and financial reporting. In addition, inconsistencies between the documents could give rise to customer confusion. Such circumstances should be minimized and eliminated to the extent possible.

As discussed above, the Commission approves the Postal Service's proposed name change to Commercial First-Class Package Service. The DMM should also reflect this same change. To the extent that the Postal Service wishes to use different, more marketable names in marketing materials and advertising, subject to the requirements of the PAEA, the Commission does not currently object to such action.

However, for official governing and binding postal documents such as the MCS and DMM, the Postal Service and the Commission should strive for consistency. To do otherwise would go against the PAEA's mandate of transparency and accountability. The Postal Service shall make the DMM consistent with this change to the MCS and make other conforming DMM changes that reflect the Commission's approval of the new product name "Commercial First-Class Package Service" in this docket.

*Appropriate filing procedures.* This case was filed pursuant to the Commission's procedures under 39 CFR 3020.90 *et seq.* The Public Representative argues that by filing under 39 CFR 3020.90 *et seq.* rules, the Postal Service's Initial Notice lacked sufficient supporting justification. He believes that the Commission should promulgate rules for addressing the Postal Service's classification change proposals that fall between "scrivener's errors" and the addition, removal, or transfer of products on the product list. This will ensure that the Commission and interested parties have access to sufficient appropriate explanatory information to form the basis for Commission decisions.

The Commission agrees with the Public Representative that the Postal Service's Initial Notice in this case did not contain sufficient information to allow interested persons or the Commission to make an informed decision on the appropriateness of the proposal. This lack of information resulted in several rounds of questions and pleadings, placing unnecessary additional burden on all parties as well as the Commission's resources.

While both the Postal Service and Public Representative suggest that the Commission's 39 CFR 3020.90 *et seq.* rules do not perfectly fit the filing, the Commission believes that they could form an appropriate mechanism for dealing with such situations. However, for proposals such as this to be effectively analyzed under 39 CFR 3020.90 *et seq.*, the Postal Service must provide more information about the proposed changes, similar to the level of information it provided in its subsequent filings

in this case.<sup>8</sup> This is particularly important given that the Commission's 39 CFR 3020.90 *et seq.* rules provide an extremely short time period for interested persons and the Commission to act.

The Commission will continue to monitor the situation in future cases and notices under 39 CFR 3020.90 *et seq.* If the Commission finds that its rules are not working effectively, it will consider adding new regulations applicable to classification changes that rise above the level of "corrections" to the MCS. See 39 CFR 3020.91.

*It is ordered:*

1. The proposal to change the name of the competitive product Lightweight Commercial Parcels to Commercial First-Class Package Service is approved as set forth in this Order.
2. The Commission finds that the other proposed changes are not inconsistent with 39 U.S.C. § 3642.
3. The Postal Service shall make conforming changes to the DMM to reflect the Commission's approval of the new product name approved in this docket.
4. The Postal Service's Motion for Leave to File Response to Comments of the Public Representative, filed August 24, 2011, is granted.

Shoshana M. Grove  
Secretary

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<sup>8</sup> It should also include any pertinent *Federal Register* notices.